

However, if an additional fee is due, the Director is authorized to charge such fee, or credit any overpayment to Deposit Account 50-0320.

**REMARKS**

Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the remarks herewith.

The Office Action required an election under 35 U.S.C. § 121 from:

**Group I**      Claims 14-22, drawn to a process for preparing L-PPT of formula I, by the reaction of HMPB, PPO in the presence of aspartate transaminases, classified in class 435, subclass 106

**Group II**      Claims 23-26, drawn to microorganisms, classified in class 435, subclass unknown due to lack of suitable description

In response to the Restriction Requirement, Applicants provisionally elect Group I, claims 14-22, for further prosecution in this application.

This election is made *with traverse* and is made without prejudice to Applicants' right to file divisional applications directed to the non-elected subject matter. It is respectfully requested that the restriction requirement be favorably reconsidered and withdrawn.

Applicants respectfully urge that the Restriction Requirement does not establish that searching all the inventions would constitute an undue burden to the Patent Office. Moreover, Applicants urge that the Restriction Requirement is contrary to public policy. Accordingly, Applicants submit that the Restriction Requirement is improper and should be withdrawn or at least modified.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, … even though it includes claims to distinct or independent inventions.” *Id.*

Applicants urge that the Restriction Requirement does not meet the second of these criteria as the search for the groups overlap. For example, both Group I and Group II are classified in class **435**, and thus overlap and should be examined together.

The present claims, therefore, represent a web of knowledge and continuity of effort that merits examination in a single application. Thus, reconsideration and modification the Restriction Requirement are warranted.

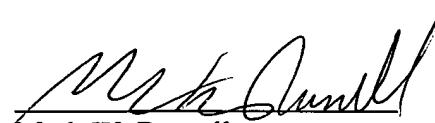
Further, it is respectfully urged that restricting the claims in the manner suggested in the Restriction Requirement constitutes an undue burden to Applicants as well as to the public. The cost of prosecuting and maintaining so many patents is unreasonable in view of the fact that the three groups are so closely related. Further, the public is inconvenienced as they will not know whether or not Applicants will file a divisional application to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

Accordingly, in view of the foregoing, reconsideration and withdrawal of the restriction requirement are requested, and an early action on the merits is earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP

By:

  
Mark W. Russell  
Reg. No. 37,514  
(212) 588-0800